

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CITY OF HUNTINGTON

Plaintiff,

v.

**AMERISOURCEBERGEN DRUG
CORPORATION, et al.,**
Defendants.

Civil Action No. 3:17-cv-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

**AMERISOURCEBERGEN DRUG
CORPORATION, et al.,**
Defendants.

Consolidated Case:

Civil Action No. 3:17-cv-01665

**PLAINTIFFS' RESPONSE TO DEFENDANTS' TRIAL MEMORANDUM REGARDING
ADMISSIBILITY OF PLAINTIFFS' JUDICIAL ADMISSIONS CONCERNING
MANUFACTURER CONDUCT**

Defendants have asked this Court to admit certain cherry-picked factual assertions from the Plaintiffs' Third Amended Complaint into the record as judicial admissions.¹ Plaintiffs stand by the allegations contained in their Third Amended Complaint and note that their position has always been that the actions of the distributors, in concert with the actions of the manufacturers and pharmacies, caused the opioid epidemic.

To the extent this Court considers the designations made by the Defendants, Plaintiffs submit that the Plaintiffs' Third Amended Complaint should be considered *in toto*. For completeness of the record and for this Court's consideration in determination of the weight and significance of the paragraphs cited by the Defendants, the Plaintiffs submit the following paragraphs from the Third Amended Complaint:

¹ See Dkt. 1462.

- ¶¶ 308-310 – “Defendants’ conduct created a public health crisis and public nuisance”;
- ¶ 323 – “Once the Marketing Defendants, employing the help of Distributor Defendants, created a mass market for prescription opioids, McKesson Corporation, AmerisourceBergen Drug Corporation, Cardinal Health, Inc., H.D. Smith Wholesale Drug Co., CVS, Rite Aid, Walgreens, Kroger, and Wal-Mart, Inc. (together “Distributor Defendants”), along with Marketing Defendants, flooded it. Distributor Defendants are responsible for delivering opioids marketed and made by the Marketing Defendants to pharmacies and other customers throughout the country. . . .”
- ¶¶1103-1124 – setting forth how the Defendants (manufacturers and distributors) worked together to achieve their common purpose through trade organizations;
- ¶¶1125-1133 – setting forth how Distributor Defendants marketed the manufacturers’ opioid products;
- §I.K – “***Collectively***, the Defendants’ Actions have had a Devastating Effect on Plaintiffs’ Communities” (emphasis added);
- ¶¶1401-1450 – Plaintiffs’ First Claim for Relief – “Common Law Public Nuisance Claim (Against ***All*** Defendants)” (emphasis added)²;
 - ¶1446 – “The tortious conduct of each Defendant was a substantial factor in creating the public nuisance.”;
 - ¶1447 – “The tortious conduct of each Defendant was a substantial factor in producing harm to Plaintiffs.”;
 - ¶1448 – “Plaintiffs have suffered an indivisible injury as a result of the tortious conduct of Defendants.”

² Plaintiffs note that there are references throughout the Third Amended Complaint that references the conduct of “the Defendants” (both manufacturers and distributors), sometimes collectively referred to as “Supply Chain Defendants.” Due to the length of the Third Amended Complaint, Plaintiffs have not highlighted every collective reference. Additional references include, *inter alia*, Plaintiffs’ Third Claim for Relief for Violation of RICO, 18 U.S.C. § 1961 *et seq.*; Plaintiffs’ Fourth Claim for Relief – Negligence; Plaintiffs’ Fifth Claim for Relief – Violation of West Virginia Controlled Substances Act); Plaintiffs’ Sixth Claim for Relief – Unjust Enrichment; and Plaintiffs’ Seventh Claim for Relief – Civil Conspiracy.

Dated: August 2, 2021

THE CITY OF HUNTINGTON

/s/ Anne McGinness Kearse

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 2, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ *Anthony J. Majestro*